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INVESTMENT TREATY WITH CAMEROON

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF CAMEROON CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT, SIGNED AT WASHINGTON ON FEBRUARY 26, 1985

JUNE 2, 1986.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 22, 1986.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the Republic of Cameroon concerning the Reciprocal Encouragement and Protection of Investment, signed at Washington on February 26, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

The Bilateral Investment Treaty (BIT) program, initiated in 1981, is designed to encourage and protect U.S. investment in developing countries. The treaty is an integral part of U.S. efforts to encourage Cameroon and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the parties also agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as possible, and give its advice and consent to ratification of the treaty at an early date.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 6, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the Republic of Cameroon concerning the Reciprocal Encouragement and Protection of Investment, signed at Washington, February 26, 1986. I recommend that this treaty be transmitted to the Senate for its advice and consent to ratification.

Also enclosed for information only is a related exchange of letters between the parties, the first an inquiry by the United States dated November 27, 1984 and the second a response from Cameroon, signed in Yaounde and dated April 7, 1986.

This treaty was negotiated under the bilateral investment treaty (BIT) program which you initiated in 1981. Development of the BIT program and the negotiation of the individual treaties have been pursued by the Office of the United States Trade Representative and the Department of State with the active participation of the Departments of Commerce and Treasury, in conjunction with other interested U.S. Government agencies. On March 25 this year, the first six BITs—with Haiti, Morocco, Panama, Senegal, Turkey, and Zaire—were submitted to the Senate for its advice and consent to ratification. Additional BITs, with Bangladesh and Egypt, are being prepared for submission to the Senate.

In 1981 you initiated the global bilateral investment treaty (BIT) program to encourage and protect U.S. investment in developing countries. By providing certain mutual guarantees and protections, a BIT creates a more stable and predictable legal framework for foreign investors in the territory of each of the treaty Parties. The negotiation of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area.

The BITs which have been signed as well as others under negotiation are an integral part of U.S. efforts to encourage other governments to adopt macroeconomic and structural policies that will promote economic growth. They are also fully consistent with your policy statement on international investment of September 9, 1983, which states that international direct investment flows should be determined by private market forces and should receive fair, equitable and non-discriminatory treatment.

Our experience to date has shown that interested countries are willing to provide U.S. investors with significant investment guarantees and assurances as a way of inducing additional foreign investment. It is U.S. policy to advise potential treaty partners that

conclusion of a BIT with the United States is an important and favorable factor in the investment relationship, but does not in and of itself result in immediate increases in U.S. investment flows.

Congressional support for the BIT program is reflected in Section 601(a) and (b) of the Foreign Assistance Act, as amended, in particular at Section 601(b) which provides:

> In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President shall . . . (3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable investment in, friendly countries and areas participating in programs under this Act.

BITs are consistent in purpose with the network of treaties of Friendship, Commerce and Navigation (FCNs) which the United States negotiated from the early years of the Republic until the last successful negotiations with Thailand and Togo in the late 1960s. They continue the U.S. policy of securing by agreement standards of equitable treatment and protection of U.S. citizens carrying on business abroad, and institutionalizing processes for the settlement of disputes between investors and host countries, and between governments. We expect that a series of bilateral treaties with interested countries will establish greater international discipline in the investment area.

The BIT was designed to protect investment not only by treaty but also by reinforcing traditional international legal principles and practice regarding foreign direct private investment. In pursuit of this objective, the model BIT adopts FCN language and concepts. Traditional FCN provisions granting rights which are not important to the typical U.S. investor were eliminated and replaced with more specific language concerning investment protection. Perhaps most significantly, the BIT goes beyond the traditional FCN to provide investor-host country arbitration in instances where an investment dispute arises.

Our BIT approach followed similar programs that had been undertaken with considerable success by a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, our industrialized partners already have nearly two hundred BITs in force, primarily with developing countries. Our treaties, which draw upon language used in the U.S. FCN treaties as well as European counterparts, are more comprehensive and far-reaching than European BITs.

The U.S.-Cameroon Treaty

The treaty with Cameroon was negotiated by an inter-agency team led by officials from the Office of the United States Trade Representative and the Department of State. The treaty satisfies all four main BIT objectives:

> —foreign investors are to be accorded treatment in accordance with international law and are to be treated no less favorably than investors of the host country or no less favorably than in-

vestors of third countries, whichever is the most favorable treatment ("national" or "most-favored-nation" treatment) subject to certain specified exceptions;

—international law standards shall apply to the expropriation of investments and to the payment of compensation for expropriation;

—free transfers shall be afforded to funds associated with an investment into and out of the host country; and

—procedures are to be established which allow an investor to take a dispute with a Party directly to binding third-party arbitration.

The provisions on treatment of foreign investment and arbitration, and in particular Cameroon's acceptance of international law as the governing law, mark an important achievement for the BIT program and our investment and international arbitration policies.

A technical memorandum explaining in detail the provisions of this treaty will be transmitted separately to the Senate Committee on Foreign Relations. That technical memorandum explains, clause by clause, the provisions of the treaty with Cameroon.

Some provisions of the treaty with Cameroon differ in minor respects from the U.S. model text. In general, however, the treaty closely follows the language contained in the U.S. model text, the most significant provisions of which are as follows.

The model BIT's definition section clarifies terms such as "company of a Party" and "investment." The BIT concept of "investment" is broad and designed to be flexible; although numerous types of economic interests are enumerated, the intent is to include all legitimate interests in the territory of either Party, whether directly or indirectly controlled by nationals of the other, having economic value or "associated" with an investment. Protected "companies of a Party" are those incorporated or otherwise organized under the laws of a Party in which nationals of that Party have a substantial interest.

The model BIT accords the better of national or most-favored-nation (MFN) treatment to foreign investment, subject to each Party's exceptions which are listed in a separate Annex. The exceptions are designed to protect state regulatory interests and for the United States to accommodate the derogations from national treatment in state or federal law relating to such areas as air transport, shipping, banking, telecommunications, energy and power production, insurance, and from national and MFN treatment in the case of ownership of real property. Any additional restrictions or limitations which a Party may adopt with respect to those matters or sectors excepted from the standards are not to affect existing investments. The BIT also includes general treatment protections designed to be a guide to interpretation and application of the treaty. Thus, the Parties agree to accord investments "fair and equitable treatment" and "full protection and security" in no case "less than that required by international law." It specifically grants nationals of a Party the right to establish investments in the territory of the other Party, restricts the right to impose performance requirements, and obliges Parties to observe their contractual obligations with investors. The U.S. model also provides that companies legally constituted under the laws of the other Party (i.e., subsidiaries of

companies of a Party) with investments in that country shall be permitted to engage "top managerial personnel of their choice, regardless of nationality."

The model BIT also confers protection from unlawful interference with property interests and assures compensation in accordance with international law standards. It provides that any direct or indirect taking must be: for a public purpose; nondiscriminatory; accompanied by the payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general standards of treatment discussed above. The BIT's definition of "expropriation" is broad and flexible; essentially "any measure" regardless of form, which the *effect* of depriving an investor of his management, control or economic value in a project may constitute an expropriation requiring compensation equal to the "fair market value." Such compensation, which "shall not reflect any reduction in such fair market value due to . . . the expropriatory action," must be "without delay," "effectively realizable," "freely transferable" and "bear current interest from the date of the expropriation . . . ." The BIT grants the right to "prompt review" by the relevant judicial or administrative authorities in order to determine whether the compensation offered is consistent with these principles. It also extends national and MFN treatment to investors in cases of loss due to war or other civil disturbance. The BIT does not provide, however, a specific valuation method for compensating such losses.

The model BIT provides for free transfers "related to an investment," specifically of returns, compensation for expropriation, contract payments, proceeds from sale, and contributions to capital for maintenance or development of an investment. Such transfers are to be made in a "freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred." The model text recognizes that notwithstanding this guarantee Parties can maintain certain laws, regulations, or court-imposed obligations which could affect the disposition of investment assets. In particular, the model text provides that Parties can require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends. The model text also recognizes that Parties retain the right to protect the rights of creditors and ensure the satisfaction of judgments in adjudicatory proceedings.

The model BIT provides that where certain defined investment disputes arise between a Party and a national or company of the other Party, including disputes as to the interpretation of an investment agreement, and the dispute cannot be solved through negotiation, it may be submitted to arbitration in accordance with any dispute settlement procedures to which the national or company and the host country have previously agreed. Unless the national or company has submitted the dispute to previously agreed dispute settlement procedures or to adjudication by domestic courts or other tribunals of the host country, the national or company may submit the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID") for binding arbitration. Exhaustion of local remedies is not required. In a separate provision, the BIT Parties also agree to grant nationals and companies of the

other Party access to their domestic courts in order to assert claims and enforce rights with respect to investments.

The model BIT provides for state-to-state arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty. In the absence of an agreement that other rules apply, the BIT refers the Parties to specific procedural rules which must govern the arbitration. The BIT also outlines the procedures for the creation of the arbitral panel.

The model BIT exhorts Parties to apply their tax policies fairly and equitably. Because the United States specifically addresses tax matters in tax treaties, the BIT generally excludes such matters. Another BIT provision exempts disputes arising under Export-Import Bank programs, or other credit guarantee or insurance arrangements providing for alternative dispute settlement arrangements, from the standard BIT arbitration clauses. The model BIT also states that the treaty shall not derogate from any obligations that require more favorable treatment of investments and declares that the treaty shall not preclude measures necessary for public order or essential security interests. The model BIT enters into force 30 days after exchange of ratifications and continues in force for at least ten years. Thereafter, either Party may terminate the treaty, subject to one year's written notice.

Each of these model provisions was developed after lengthy and extensive consultations within the U.S. Government and with the private sector. Nonetheless, in negotiating a particular treaty, the U.S. Government retains, of course, some flexibility to adopt modifications as necessary and in light of experience. While the U.S. model text has recently been simplified, the provisions summarized above have all been retained.

Some of the provisions of the U.S.-Cameroon treaty differ in minor respects from the U.S. negotiating text, although none of the changes represent substantive departures from U.S. objectives. The more significant modifications are as follows:

(1) Expropriation (Article III): The treaty with Cameroon is substantively identical to the model text with respect to what constitutes an expropriation and the compensation due under international law in such cases. This treaty provides, however, for payment of interest in such cases at a rate equivalent to "current international rates," instead of the "commercially reasonable rate" provided for in the model text. In addition, this treaty provides that compensation for expropriation shall be freely transferable at the "rate of exchange generally used by the IMF" on the date of expropriation. The model text provides for such payments at the "prevailing market rate of exchange on the date of expropriations." Both of these changes were made in response to concerns by the Cameroonians and neither is intended to be substantive.

(2) Transfers (Article V): The treaty's transfers provisions are generally similar in substance to the model text and provide for free transfer of funds associated with an investment in freely convertible currency, without delay, at prevailing market exchange rates. There are two minor deviations in the Cameroonian text:

(a) The model text provides that transfers shall be permitted at "the prevailing market rate of exchange," while the treaty

with Cameroon refers to "the prevailing exchange rate generally used by the IMF;" and

(b) The treaty with Cameroon provides that in the case of investments in Cameroon, if the free currency of the investor's choice is unavailable, transfers will be permitted in the currency or currencies in which the investment was constituted or in any other freely convertible currency.

(3) Disputes Settlement/Arbitration (Article VII): Dispute settlement provisions closely follow those in the model text. In the absence of other dispute settlement procedures specified in an investment agreement between a Party and an investor, investors covered under the treaty have recourse to binding arbitration through the International Centre for the Settlement of Investment Disputes (ICSID).

The treaty with Cameroon contains a provision, not contained in the model text, which states that investors will not be entitled to compensation "for more than the value of its affected investment. . . ." This responds to Cameroonian concerns that investors not be compensated, through insurance or otherwise, in excess of actual losses incurred.

(4) Compensation for Damages (Article IV): Unlike the model text, the treaty with Cameroon specifically states that in the case of damages caused by war or similar events, "both Parties agree that no compensation is owed to nationals or companies responsible for damage to their own investment." The model treaty implicitly denies compensation for damages in such cases.

(5) Consultations (Article VI): Like the model text, the treaty with Cameroon provides that consultations shall be held to resolve any disputes related to the treaty at the request of either Party. The treaty goes beyond the model text provision by:

(a) allowing Parties to request consultations on the ground that their international interests are or are likely to be affected by investment-related laws, practices, or policies of the other Party; and

(b) including a provision that in order to assess the effectiveness of the treaty in encouraging and protecting investments, consultations "could" take place periodically between the two Parties. This provision, which does not represent a firm obligation, was included in response to Cameroon's desire to include a formal joint economic commission as an element of the treaty, a proposal which the United States did not accept.

(6) Employment Rights (Article II 5(b)): In the model text, investors have the right to engage top managerial personnel "regardless of nationality." In this treaty, the phrase "regardless of nationality" is qualified by a cross-reference to each Party's laws relating to the entry and sojourn of aliens. The Cameroonians insisted on this clarification to insure that "regardless of nationality" would not permit entry into Cameroon of South Africans or certain other nationalities which the Cameroonian Government wishes to exclude. The "regardless of nationality" phrase has been included in the model text to insure that companies of a Party investing in the United States comply with U.S. anti-discrimination employment laws in their hiring practices. Although this phrase has not been included in the provision of Article II 5(b) which permits investors

to hire technical, professional and managerial personnel of their choice, it is understood that the right to hire such personnel nevertheless remains subject to U.S. anti-discrimination employment laws.

(7) Entry into Force (Article XIII): Paragraph two of Article XIII of the treaty with Cameroon provides that the treaty will enter into force 30 days after the Parties have notified each other that "the constitutional procedures required for ratification in their respective countries have been completed." The U.S. will seek assurances that this means that entry into force will take place 30 days after exchange of instruments of ratification, as is provided in the model text.

(8) Taxation (Article XI): The model text provides that the dispute settlement provisions of the BIT apply only to certain matters of taxation expressly mentioned in the treaty. This clause was deemed unnecessary and was omitted at the request of the Cameroonian negotiators. Instead, the treaty with Cameroon expressly provides that the provisions on treatment of investment and consultations between the Parties do not apply to taxation matters. This clause responds to U.S. concerns that neither Party be deemed to be under obligations either to grant national treatment or to engage in consultations with respect to matters of taxation. Under U.S. law and policy, such issues are negotiated in the context of bilateral income tax treaties.

At the request of U.S. negotiators, Cameroon has confirmed in a letter signed in Yaounde and dated April 7, 1986, that PECTEN, a Cameroonian subsidiary of Shell Oil Company, is considered to be a U.S. firm covered under the Treaty. This exchange of letters is enclosed with this report for information only.

Submission of this treaty marks a significant development in our international investment policy. I join with the United States Trade Representative and other U.S. Government agencies in supporting this treaty and favor its transmission to the Senate at an early date.

Respectfully submitted,

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Enclosure: As stated.

Treaty Between the United States of America and the Republic of Cameroon Concerning the Reciprocal Encouragement and Protection of Investment

The United States of America and the Republic of Cameroon (each hereinafter referred to as a "Party"),

Desiring to promote greater mutual economic cooperation between them, particularly with respect to investments by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement upon the treatment to be accorded such investments will stimulate the flow of private capital and the economic development of both Parties,

Aware that fair and equitable treatment would contribute to maintaining a stable framework for investment in order to facilitate the maximum effective utilization of economic resources,

Have resolved to conclude a treaty concerning the encouragement and reciprocal protection of investments, and

Have agreed as follows:

ARTICLE I

Definitions

1. For the purposes of this Treaty,

(a) "Company of a Party" means any kind of juridical entity including any corporation, company, association, or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;

(b) "Investment" means every kind of asset in the territory of either Party, owned or controlled directly or indirectly by nationals or companies of either party, including equity, debt, service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) all or part of the shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value, and associated with an investment;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill; and

(v) any right conferred by law or contract and all permits and licenses such as those required for the exploitation of natural resources;

(c) "Return" means any amount derived directly or indirectly from an investment, including profits; dividends; interest; capital

gains; royalty payment; management, technical assistance or other fee; and payments in kind;

(d) "National" of a Party means a natural person who is a national of a Party under its laws and regulations;

(e) "Own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located;

(f) "Territory" means all the territory of a Party recognized by international law.

2. Any assets or returns invested or reinvested are also considered as investment.

3. Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of this Treaty, if nationals of any third country own or control such company. However, if one Party believes that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution.

ARTICLE II

Encouragement and Treatment of Investment

1. Each Party shall endeavor to maintain a favorable environment for existing or new investments in its territory by nationals and companies of the other Party and shall permit such investments to be acquired and established on terms and conditions that accord treatment no less favorable than the treatment it accords in like situations to investment of its own nationals or companies or to nationals and companies of any third country, whichever is most favorable.

2. Each Party shall accord existing or new investments in its territory, and associated activities related to these investments, of nationals or companies of the other Party treatment no less favorable than that which it accords in like situations to investments and associated activities of its own nationals or companies, or nationals or companies of any third country, whichever is the most favorable. Associated activities related to an investment include, but are not limited to:

(i) the establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

(ii) the organization of companies under applicable laws and regulations; the acquisition of companies or interests in companies or in their property; and the management, control, maintenance, use, enjoyment and expansion and the sale, liquidation, dissolution or other disposition, of companies organized or acquired;

(iii) the making, performance and enforcement of contracts related to investment;

(iv) the acquisition (whether by purchase, lease or any other legal means), ownership and disposition (whether by sale, testament or any other legal means) of personal property of all kinds, both tangible and intangible.

3. (a) Notwithstanding the preceding provisions of this Article, each Party reserves the right to maintain limited exceptions to the standard of treatment otherwise required if such exceptions fall within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party of any future exceptions falling within the sectors or matters listed in the Annex, and to limit as much as possible the number of exceptions. It is understood the treatment accorded pursuant to this subparagraph shall not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country, except with respect to ownership of real property. Rights to engage in mining on the public domain shall be dependent on reciprocity.

(b) No exception introduced after the date of entry into force of this treaty shall apply to investments of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

4. Investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. The treatment, protection and security of investment shall be in accordance with applicable national laws and international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party. Each Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Party.

5. (a) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

(b) Nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional, technical and managerial personnel of their choice, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of investments. Companies which are incorporated, constituted, or otherwise organized under the applicable laws or regulations of one Party, and which are owned or controlled by nationals or companies of the other Party, shall be permitted to engage, within the territory of the first Party, top managerial personnel of their choice, regardless of nationality, subject to the provisions of paragraph 5(a) above.

6. Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments owned by nationals or companies of the other Party, which require or enforce commitments to export goods produced, or which specify that goods or services must be purchased locally, or which impose any other similar requirements.

7. Each Party recognizes that in order to maintain a favorable environment for investments in its territory by nationals or compa-

nies of the other Party, it shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Party shall grant to nationals or companies of the other Party, on terms and conditions no less favorable than those which it grants in like situations to its own nationals or companies or tc nationals or companies of any third country, whichever is the most favorable treatment, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations of the forum for the purpose of asserting claims, and enforcing rights, with respect to their investments.

8. Each Party and its political or administrative subdivisions shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments in its territory of nationals or companies of the other Party.

9. The treatment accorded by a Party to nationals or companies of the other Party under the provisions of paragraphs 1 and 2 of this Article shall in any State, Territory, possession, or political or administrative subdivision of the Party be the treatment accorded therein to companies incorporated, constituted or otherwise duly organized in other States, Territories, possessions, or political or administrative subdivisions of the said Party.

ARTICLE III

Compensation for Expropriation

1. Investments shall not be expropriated or nationalized either directly or indirectly except for a public purpose and in accordance with due process of law and the principles enunciated in paragraph 4 of Article II. Such expropriations or nationalizations give right to prompt, adequate and effective compensation corresponding to the fair market value of the investments as of the day before the measures were taken, or, as the case may be, as of the day before the measures contemplated were made public. Such compensation shall include interest at a rate equivalent to current international rates from the date of expropriation or nationalization; it shall be paid without delay and be freely transferable at the rate of exchange generally used by the IMF on that date.

2. A national or company of either Party that asserts that all or part of its investment has been expropriated shall have a right to prompt review by the appropriate administrative or judicial authorities of the other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and compensation therefor, conforms to the provisions of the preceding paragraph.

ARTICLE IV

Compensation for Damages Due to War and Similar Events

1. Nationals or companies of one Party whose investments in the territory of the other Party suffer

(a) damages due to war or other armed conflict between such other Party and a third country or

(b) damages due to revolution, state of national emergency, revolt, insurrection, riot or act of terrorism in the territory of such other Party,

shall be accorded treatment no less favorable than that which the other Party accords to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, when making restitution, indemnification, compensation or other appropriate settlement with respect to such damages. Both Parties agree that no compensation is owed to nationals or companies responsible for damage to their own investments.

2. In the event that such damages result from:

(a) a requisitioning of property by the other Party's forces or authorities, or

(b) destruction of property by the other Party's forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

the national or company shall be accorded restitution or adequate compensation consistent with Article III.

3. The payment of any indemnification, compensation or other appropriate settlement pursuant to this Article shall be freely transferable.

ARTICLE V

Transfers

1. Each Party shall permit all transfers related to an investment in its territory of a national or company of the other Party to be made freely and without delay into and out of its territory. Such transfers include, among others, the following: returns; compensation; payments made arising out of a dispute concerning an investment; payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement; amounts to cover expenses relating to the management of the investment; royalties and other payments derived from licenses; franchises or other grants of rights or from administrative or technical assistance agreements, including management fees; proceeds from the sale of all or any part of an investment and from the partial or complete liquidation of the company concerned, including any incremental value; additional contributions to capital necessary or appropriate for the maintenance or development of an investment.

2. Except as provided in Article III paragraph 1, transfers shall be at the prevailing rate of exchange generally used by the IMF on the date of transfer in the currency or currencies to be transferred.

(a) The Republic of Cameroon assures that such transfers shall be permitted in the currency or currencies, in which the

investment was constituted, or in the absence of such currency or currencies in any other freely convertible currency.

(b) The United States assures that such transfers shall be permitted in any freely convertible currency.

3. Notwithstanding the preceding paragraphs, either Party may maintain laws and regulations: (a) prescribing transfers procedures provided such procedures are carried out expeditiously and do not derogate from the provisions in paragraphs 1 and 2; (b) requiring reports of currency transfer; and (c) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable and nondiscriminatory application of its law.

ARTICLE VI

Consultations and Exchange of Information

1. The Parties, upon the written request of one of them, shall promptly hold consultations for the purpose of discussing the interpretation of application of the Treaty or to resolve any disputes in connection therewith. Consultations shall be held should one Party request consultations on grounds that its international interests are or are likely to be adversely affected by laws, regulations, administrative practices or procedures, adjudicatory decisions, or policies of the other Party that pertain to or affect investments of its nationals or companies in the territory of such other Party, including conditions imposed on establishment.

2. If one Party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

3. Furthermore, in order to assess the effectiveness of this Treaty in encouraging and protecting investments, consultations could take place periodically between the two parties.

ARTICLE VII

Settlement of Investment Disputes Between One Party and a National or Company of the Other Party

1. For purposes of this Article, an investment dispute is defined as a dispute involving:

(i) the interpretation or application of an investment agreement between one Party and a national or company of the other Party;

(ii) the interpretation or application of any investment authorization granted by the foreign investment authorities of one Party to the national or company of the other Party;

(iii) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party, the parties shall first seek to resolve the dispute by consultation and negotiation.

The parties may, upon the initiative of either of them and during the course of their consultation and negotiation, agree to rely upon non-binding, third-party procedures.

If the dispute cannot be resolved through consultation and negotiation, the dispute-settlement procedures agreed upon in advance shall be used.

With respect to expropriation by either Party, any dispute-settlement procedures specified in the investment agreement between such Party and the national or company of the other Party shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and the relevant provisions of the domestic laws of such Party and treaties and other international agreements regarding enforcement of arbitral awards to which such Party has subscribed.

3. If the dispute has not been resolved in accordance with the aforementioned procedures, the national or company concerned has the option to submit the dispute in writing to the International Centre for the Settlement of Investment Disputes (ICSID) for settlement by conciliation or binding arbitration at any time, provided that within six months from the date on which the dispute arose, the dispute has not, for any reason, been submitted by the national or company for resolution in accordance with any applicable dispute-settlement procedure previously agreed to by the parties to the dispute, or, the national or company concerned has not brought the dispute before the administrative agencies or competent courts of the Party concerned.

Each Party hereby consents to the submission of an investment dispute to ICSID for settlement by conciliation or binding arbitration.

Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States and the Regulations and Rules of ICSID.

4. In any proceeding, judicial, arbitral, or otherwise, concerning an investment dispute between it and a national or company of the other Party, a Party shall not assert, as a defense, counter-claim, right of set-off or any other right, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of the alleged damages from any third party whatsoever, including such other Party and its political subdivisions, agencies, or instrumentalities. Nevertheless, a national or company of the said Party shall not be entitled to compensation for more than the value of its affected investments, taking into account all sources of compensation within the territory of the other Party liable for compensation.

5. For the purpose of any proceedings initiated before ICSID in accordance with this Article, any company of either Party that, before the occurrence of the event or events giving rise to the dispute, was owned or controlled by nationals or companies of the other Party, shall be treated as a national or company of such other Party.

6. The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE VIII

Settlement of Disputes Between the Parties Concerning the Interpretation or Application of This Treaty

1. Any dispute between the Parties concerning the interpretation or application of this treaty shall be resolved through consultations between the representatives of the two Parties and, if this should fail, through other diplomatic channels.

2. If the dispute between the Parties cannot be resolved through the aforesaid means, and unless there is agreement between the Parties to submit the dispute to the International Court of Justice, both Parties hereby agree to submit it upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules and principles of international law.

3. The tribunal shall be established for each case as follows: within two months of receipt of a request for arbitration, each Party shall appoint an arbitrator; the two arbitrators so appointed shall select a third arbitrator as chairman, who is a national of a third state; the chairman shall be appointed within two months of the date of appointment of the other two arbitrators.

4. If the required appointments have not been made within the time specified in paragraph 3 of this Article, either of the Parties may, in the absence of any other agreement, request that the President of the International Court of Justice make the required appointments. If the President is a national of one of the Parties or if he is unable to act, the Vice President shall be asked to make the required appointments. If the Vice President is unable to act, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to act shall be asked to make the required appointments.

5. In the event that an arbitrator resigns or is for any reason unable to perform his duties, a replacement shall be appointed within thirty days, utilizing the same method as described above.

6. Unless otherwise agreed to by the Parties, all submissions shall be made and all hearings shall be held within six months of the date of the selection of the third arbitrator, and the tribunal shall render its decision within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

7. The tribunal shall decide in all matters by majority vote. All decisions shall be binding on both Parties. Each Party shall bear the expenses of its own representation in the arbitration proceedings. The costs of the proceeding shall be paid for equally by the Parties. The tribunal may, however, decide that a higher proportion of the costs be paid by the losing Party. Such a decision shall be binding.

8. The Parties may agree to specific arbitral procedures. In the absence of such agreement, the Model Rules on Arbitral Procedures adopted by the United Nations International Law Commission in 1958 and commended to member states by the United Nations General Assembly in Resolution 1262 (XIII) shall govern.

9. This Article shall not be applicable to a dispute submitted to ICSID pursuant to Article VII(3). Recourse to the procedures set forth in this Article is not precluded, however, in the event an award rendered in such dispute is not honored by a Party, or an issue exists related to a dispute submitted to the Center but not argued or decided.

10. The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX

Preservation of Rights

This Treaty shall not supersede, prejudice or otherwise derogate from

(a) laws, regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party,

(b) international legal obligations, or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

whether extant at the time of entry into force of this Treaty or thereafter, that entitle investments or associated activities of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE X

Measures Not Precluded by This Treaty

1. This Treaty shall not preclude the application by either Party or any political subdivision thereof of any and all measures necessary in its territory for the maintenance of public order and morals, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments in its territory of nationals and companies of the other Party, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI

Taxation

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. The provisions of Articles II and VI of this Treaty do not apply to taxation matters.

ARTICLE XII

Application of This Treaty to Political Subdivisions of the Parties

This treaty shall apply to political subdivisions of the Parties.

ARTICLE XIII

Entry into Force, Duration, and Termination

1. This Treaty shall be subject to ratification by each of the Parties, and the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force thirty days following the date on which the Parties have notified each other that the constitutional procedures required for ratification in their respective countries have been completed. It shall remain in force for a period of ten years and shall continue in force, unless otherwise terminated in accordance with the provisions of paragraph 3 of this Article. It shall apply to investment existing at the time of entry into force as well as to investments made or acquired thereafter.

3. This Treaty shall be renewed by tacit agreement for another ten-year period unless one of the Parties notifies the other Party in writing of its intention to terminate it, one year prior to the expiration of the initial ten-year period.

If the Treaty is not renewed, its termination shall become effective one year after the other Party receives notification thereof.

4. With respect to investments made prior to the effective date of termination, the provisions of this Treaty shall remain in effect for a further period of ten years from such date of termination.

5. The Annex to this Treaty shall be an integral part thereof.

6. IN WITNESS THEREOF, the undersigned representatives, duly authorized by their respective governments, have signed this Treaty in duplicate in French and English, both texts being equally authentic. DONE in Washington, February 26, 1986.

For the Government of the United States of America:

CLAYTON YEUTTER.

For the Government of the Republic of Cameroon:

WILLIAM ETEKI MBOUMOUA.

ANNEX

In accordance with Article II, paragraph 3, each Party reserves the right to maintain limited exceptions in the sectors it has indicated below:

THE UNITED STATES OF AMERICA

Air transportation; ocean and coastal shipping; banking; insurance; government procurement; government grants; government insurance and loan programs; energy and power production; custom house brokers; ownership of real estate; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources.

THE REPUBLIC OF CAMEROON

Air transportation, ocean shipping, public markets, radio and television, ownership of shares in INTELCAM, provision of common carrier telephone and telegraph service, provision of submarine cable services, consultants on taxation matters.

119356-B

REPUBLIC OF CAMEROON,
MINISTRY OF FOREIGN AFFAIRS,
Yaounde, April 7, 1986.

The MINISTER,
His Excellency CLAYTON YEUTTER,
U.S. Trade Representative, Washington, D.C.

MR. AMBASSADOR: I hereby acknowledge receipt of the letter that reads as follows:

"As part of our understanding regarding the Treaty between the United States of America and the Republic of Cameroon concerning the Reciprocal Encouragement and Protection of Investment, our two governments have discussed the subject of investments entitled to coverage under this Treaty.

"We would appreciate confirmation that your Government agrees to extend Pecten International Company the benefits of this Treaty."

I have the honor to confirm that our Government has decided to extend the benefits of this Treaty to Pecten International Company.

Accept, Excellency, the assurances of my high consideration.

WILLIAM ETEKI MBOUMOUA,
Minister of Foreign Affairs.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, November 27, 1984.

Ambassador PAUL PONDI,
Embassy of the Republic of Cameroon, 2349 Massachusetts Avenue NW., Washington, DC.

DEAR MR. AMBASSADOR: As part of our understanding regarding the Treaty between the United States of America and the Republic of Cameroon concerning the Reciprocal Encouragement and Protec-

tion of Investment, our two governments have discussed the subject of investments entitled to coverage under this Treaty.

We would appreciate confirmation that your Government agrees to extend Pecten International Company the benefits of this Treaty.

Respectfully,

EDWARD M. ROZYNSKI,
Director, Bilateral Investment
Treaty Program.

○

99TH CONGRESS
2d Session

SENATE

TREATY DOC.
99-23

INVESTMENT TREATY WITH BANGLADESH

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE'S REPUBLIC OF BANGLADESH CONCERNING THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENT, WITH PROTOCOL AND EXCHANGE OF LETTERS, SIGNED AT WASHINGTON ON MARCH 12, 1986

June 2, 1986.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

71-118 O

WASHINGTON : 1986

S385-11

LETTER OF TRANSMITTAL

THE WHITE HOUSE, May 30, 1986.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and exchange of letters, signed at Washington on March 12, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

The Bilateral Investment Treaty (BIT) program, initiated in 1981, is designed to encourage and protect U.S. investment in developing countries. The treaty is an integral part of U.S. efforts to encourage Bangladesh and other governments to adopt macroeconomic and structural policies that will promote economic growth. It is also fully consistent with U.S. policy toward international investment. That policy holds that an open international investment system in which participants respond to market forces provides the best and most efficient mechanism to promote global economic development. A specific tenet, reflected in this treaty, is that U.S. direct investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the parties also agree to international law standards for expropriation and compensation; free financial transfers; and procedures, including international arbitration, for the settlement of investment disputes.

I recommend that the Senate consider this treaty as soon as possible, and give its advice and consent to ratification of the treaty, with protocol and exchange of letters, at an early date.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 9, 1986.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and exchange of letters, signed at Washington, March 12, 1986. This treaty was negotiated under the bilateral investment treaty (BIT) program which you initiated in 1981. Development of the BIT program and the negotiation of the individual treaties have been pursued by the Office of the United States Trade Representative and the Department of State with the active participation of the Departments of Commerce and Treasury, in conjunction with other interested U.S. Government agencies. On March 25 this year, the first six BITs—with Haiti, Morocco, Panama, Senegal, Turkey, and Zaire—were submitted to the Senate for its advice and consent to ratification. Additional BITs, with Cameroon and Egypt, are being prepared for submission to the Senate. I recommend that this treaty, with protocol and related exchange of letters, be transmitted to the Senate for its advice and consent to ratification.

In 1981 you initiated the global bilateral investment treaty (BIT) program to encourage and protect U.S. investment in developing countries. By providing certain mutual guarantees and protections, a BIT creates a more stable and predictable legal framework for foreign investors in the territory of each of the treaty Parties. The negotiation of a series of bilateral treaties with interested countries establishes greater international discipline in the investment area.

The BITs which have been signed as well as others under negotiation are an integral part of U.S. efforts to encourage other governments to adopt macroeconomic and structural policies that will promote economic growth. They are also fully consistent with your policy statement on international investment of September 9, 1983, which states that international direct investment flows should be determined by private market forces and should receive fair, equitable and non-discriminatory treatment.

Our experience to date has shown that interested countries are willing to provide U.S. investors with significant investment guarantees and assurances as a way of inducing additional foreign investment. It is U.S. policy to advise potential treaty partners that

conclusion of a BIT with the United States is an important and favorable factor in the investment relationship, but does not in and of itself result in immediate increases in U.S. investment flows.

Congressional support for the BIT program is reflected in Section 601(a) and (b) of the Foreign Assistance Act, as amended, in particular at Section 601(b) which provides:

> In order to encourage and facilitate participation by private enterprise to the maximum extent practicable in achieving any of the purposes of this Act, the President shall . . . (3) accelerate a program of negotiating treaties for commerce and trade, including tax treaties, which shall include provisions to encourage and facilitate the flow of private investment to, and its equitable investment in, friendly countries and areas participating in programs under this Act.

BITs are consistent in purpose with the network of treaties of Friendship, Commerce and Navigation (FCNs) which the United States negotiated from the early years of the Republic until the last successful negotiations with Thailand and Togo in the late 1960s. They continue the U.S. policy of securing by agreement standards of equitable treatment and protection of U.S. citizens carrying on business abroad, and institutionalizing processes for the settlement of disputes between investors and host countries, and between governments. We expect that a series of bilateral treaties with interested countries will establish greater international discipline in the investment area.

The BIT was designed to protect investment not only by treaty but also by reinforcing traditional international legal principles and practice regarding foreign direct private investment. In pursuit of this objective, the model BIT adopts FCN language and concepts. Traditional FCN provisions granting rights which are not important to the typical U.S. investor were eliminated and replaced with more specific language concerning investment protection. Perhaps most significantly, the BIT goes beyond the traditional FCN to provide investor-host country arbitration in instances where an investment dispute arises.

Our BIT approach followed similar programs that had been undertaken with considerable success by a number of European countries, including the Federal Republic of Germany and the United Kingdom, since the early 1960s. Indeed, our industrialized partners already have nearly two hundred BITs in force, primarily with developing countries. Our treaties, which draw upon language used in the U.S. FCN treaties as well as European counterparts, are more comprehensive and far-reaching than European BITs.

THE U.S.-BANGLADESH TREATY

The treaty with Bangladesh was negotiated by an inter-agency team led by officials from the Office of the United States Trade Representative and the Department of State. The treaty satisifes all four main BIT objectives:

—foreign investors are to be accorded treatment in accordance with international law and are to be treated no less favorably

than investors of the host country or no less favorably than investors of third countries, whichever is the most favorable treatment ("national" or "most-favored-nation" treatment) subject to certain specified exceptions;

—international law standards shall apply to the expropriation of investments and to the payment of compensation for expropriation;

—free transfers shall be afforded to funds associated with an investment into and out of the host country; and

—procedures are to be established which allow an investor to take a dispute with a Party directly to binding third-party arbitration.

The provisions on treatment of foreign investment and arbitration, and in particular Bangladesh's acceptance of international law as the governing law, mark an important achievement for the BIT program and our investment and international arbitration policies.

A technical memorandum explaining in detail the provisions of this treaty will be transmitted separately to the Senate Committee on Foreign Relations. That technical memorandum explains, clause by clause, the provisions of the treaty with Bangladesh.

Some provisions of the treaty with Bangladesh differ in minor respects from the U.S. model text. In general, however, the treaty closely follows the language contained in the U.S. model text, the most significant provisions of which are as follows.

The model BIT's definition section clarifies terms such as "company of a Party" and "investment." The BIT concept of "investment" is broad and designed to be flexible; although numerous types of economic interests are enumerated, the intent is to include all legitimate interests in the territory of either Party, whether directly or indirectly controlled by nationals of the other, having economic value or "associated" with an investment. Protected "companies of a Party" are those incorporated or otherwise organized under the laws of a Party in which nationals of that Party have a substantial interest.

The model BIT accords the better of national or most-favored-nation (MFN) treatment to foreign investment, subject to each Party's exceptions which are listed in a separate Annex. The exceptions are designed to protect state regulatory interests and for the United States to accommodate the derogations from national treatment in state or federal law relating to such areas as air transport, shipping, banking, telecommunications, energy and power production, insurance, and from national and MFN treatment in the case of ownership of real property. Any additional restrictions or limitations which a Party may adopt with respect to those matters or sectors excepted from the standards are not to affect existing investments. The BIT also includes general treatment protections designed to be a guide to interpretation and application of the treaty. Thus, the Parties agree to accord investments "fair and equitable treatment" and "full protection and security" in no case "less than that required by international law." It specifically grants nationals of a Party the right to establish investments in the territory of the other Party, restricts the right to impose performance requirements, and obliges Parties to observe their contractual obligations

with investors. The U.S. model also provides that companies legally constituted under the laws of the other Party (i.e., subsidiaries of companies of a Party) with investments in that country shall be permitted to engage "top managerial personnel of their choice, regardless of nationality."

The model BIT also confers protection from unlawful interference with property interests and assures compensation in accordance with international law standards. It provides that any direct or indirect taking must be: for a public purpose; nondiscriminatory; accompanied by the payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general standards of treatment discussed above. The BIT's definition of "expropriation" is broad and flexible; essentially "any measure" regardless of form, which has the *effect* of depriving an investor of his management, control or economic value in a project may constitute an expropriation requiring compensation equal to the "fair market value." Such compensation, which "shall not reflect any reduction in such fair market value due to . . . the expropriatory action," must be "without delay," "effectively realizable," "freely transferable" and "bear current interest from the date of the expropriation . . . ." The BIT grants the right to "prompt review" by the relevant judicial or administrative authorities in order to determine whether the compensation offered is consistent with these principles. It also extends national and MFN treatment to investors in cases of loss due to war or other civil disturbance. The BIT does not provide, however, a specific valuation method for compensating such losses.

The model BIT provides for free transfers "related to an investment," specifically of returns, compensation for expropriation, contract payments, proceeds from sale, and contributions to capital for maintenance or development of an investment. Such transfers are to be made in a "freely convertible currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred." The model text recognizes that notwithstanding this guarantee Parties can maintain certain laws and regulations regarding transfers provided these are applied in a non-discriminatory fashion. In particular, the model text provides that Parties can require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends. The model text also recognizes that Parties retain the right to protect the rights of creditors and ensure the satisfaction of judgments in adjudicatory proceedings.

The model BIT provides that where certain defined investment disputes arise between a Party and a national or company of the other Party, including disputes as to the interpretation of an investment agreement, and the dispute cannot be solved through negotiation, it may be submitted to arbitration in accordance with any dispute-settlement procedures to which the national or company and the host country have previously agreed. Unless the national or company has submitted the dispute to previously agreed dispute settlement procedures or to adjudication by domestic courts or other tribunals of the host country, the national or company may submit the dispute to the International Centre for the Settlement of Investment Disputes ("ICSID") for binding arbitration. Exhaus-

tion of local remedies is not required. In a separate provision, the BIT Parties also agree to grant nationals and companies of the other Party access to their domestic courts in order to assert claims and enforce rights with respect to investments.

The model BIT provides for state-to-state arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty. In the absence of an agreement that other rules apply, the BIT refers the Parties to specific procedural rules which must govern the arbitration. The BIT also outlines the procedures for the creation of the arbitral panel.

The model BIT exhorts Parties to apply their tax policies fairly and equitably. Because the United States specifically addresses tax matters in tax treaties, the BIT generally excludes such matters. Another BIT provision exempts disputes arising under Export-Import Bank programs, or other credit guarantee or insurance arrangements providing for alternative dispute settlement arrangements, from the standard BIT arbitration clauses. The model BIT also states that the treaty shall not derogate from any obligations that require more favorable treatment of investments and declares that the treaty shall not preclude measures necessary for public order or essential security interests. The model BIT enters into force 30 days after exchange of ratifications and continues in force for at least ten years. Thereafter, either Party may terminate the treaty, subject to one year's written notice.

Each of these model provisions was developed after lengthy and extensive consultations within the U.S. Government and with the private sector. Nonetheless, in negotiating a particular treaty, the U.S. Government retains, of course, some flexibility to adopt modifications as necessary and in light of experience. While the U.S. model text has recently been simplified, the provisions summarized above have all been retained.

Some of the provisions of the U.S.-Bangladesh treaty differ in minor respects from the U.S. negotiating text, although none of the changes represent substantive departures from U.S. objectives. The more significant modifications are as follows:

(1) Transfers (Article V): This treaty's transfers provisions, consistent with the model text, generally provide an investor with the right to transfer freely funds associated with an investment in freely convertible currency, without delay, at prevailing market exchange rates.

However, Paragraph 4 of the Protocol accompanying this treaty allows Bangladesh to restrict transfers if "foreign exchange reserves [are] at a very low level." In such case,

> the Government of Bangladesh may temporarily delay transfers of sales or liquidation proceeds, but only (i) in a manner not less favorable than that accorded to comparable transfers to investors of third countries; (ii) to the extent and for the time period necessary to restore its reserves to a minimally acceptable level, but in no case for a period of more than five years, during each year of which an amount of no less than 20% of the value of the proceeds shall be permitted to be transferred; and (iii) after providing the investor an opportunity to invest the sales or

liquidation proceeds in a manner which will preserve its value until transfer occurs.

During negotiations, Bangladesh officials were particularly concerned with the effect that the liquidation of a substantial investment could have on the country's foreign exchange reserves. Transfer provisions have been qualified in similar respects in the treaties with Egypt, Morocco, Turkey, and Zaire.

(2) State-to-State Arbitration (Article VIII): Like the model text, the treaty with Bangladesh provides for state-to-state arbitration between the Parties in case of a dispute regarding the interpretation or application of the treaty.

The model text requires that all hearings and submissions must be completed within six months of the formation of the tribunal, and a final decision must be rendered within two months of the date of final submissions or the closing of hearings, whichever is later. The treaty with Bangladesh requires that an arbitral tribunal for state-to-state arbitration must render a final decision within one year of the formation of the tribunal; no time limitations for hearings or submission of evidence are specified. This change resulted from the United States accepting, in the spirit of compromise, Bangladesh's text on this provision, since it was essentially similar to the model text.

In addition, the treaty with Bangladesh does not include a reference to the United Nations International Law Commission's Model Rules on Arbitral Procedure, to be used in the absence of an agreement between the Parties. In such instances, the United States and Bangladesh have agreed that the arbitral tribunal should determine its own rules of procedure.

(3) Customs Union Exemption (Protocol, Paragraph 2): Paragraph 2 of the Protocol exempts from MFN treatment advantages extended to other countries by virtue of membership in a regional customs union or free trade area. While the model text contains no similar provision, a "customs union exemption" has been included in U.S. BITs with Egypt, Haiti and Morocco.

(4) Employment (Article II (4)(b)): Article II (4)(b) of the treaty with Bangladesh gives investors the right to hire the top managerial personnel of their choice; and allows them to engage technical and professional personnel of their choice, subject to local employment laws. This provision, while similar to the model text, differs in two minor respects:

(a) The model text provides that the choice of employment may be made "regardless of nationality." The intent of the qualification is to assure compliance with U.S. anti-discrimination laws. Although the treaty with Bangladesh does not contain this qualification, the parties have exchanged side letters which clarify that investors may choose employees "on the basis of nationality." These letters were signed and exchanged at the time the treaty was signed in Washington on March 12, 1986. It is understood that the phrase "on the basis of nationality" serves the same function. The Bangladesh negotiators would not accept "regardless of nationality" since there are certain nationalities ineligible for entry into Bangladesh.

(b) The treaty's employment provision is also limited by paragraph 3 of the Protocol. That paragraph: (1) subjects the right of nationals or companies to employ personnel to Article X, which provides that Parties are not precluded from, *inter alia*, adopting measures necessary to maintain public order, protecting essential security interests, or prescribing special formalities for the establishment of investments; and (2) recognizes that laws exist which require employment of local nationals, but the Parties agree to administer such laws flexibly, taking into account the nature of the investment, the requirements of the positions in question, and the availability of qualified nationals.

The first qualification was already implicit in the model text. The second was included because of strong Bangladesh insistence that one of the principal benefits of foreign investment is the development of local employee skills.

(5) Performance Requirements (Articlel II (6)): Unlike the model text, which states that "neither Party shall impose" performance requirements, the treaty with Bangladesh uses the hortatory language "shall seek to avoid." This language was adopted because Bangladesh strongly holds the position that two of the main purposes of attracting foreign investment are to generate foreign exchange and to utilize local resources. Similar hortatory language concerning performance requirements is found in U.S. BITs with Haiti, Morocco, Senegal and Turkey.

(6) Losses Concerning War Damage (Article IV): Paragraph 5 of the Protocol states that "the provisions of this treaty are not intended to apply to any claims concerning losses incurred prior to the entry into force of this treaty by nationals or companies of either Party." The Bangladesh negotiators requested this provision to exclude claims for damage sustained by investors in the 1971 war leading to Bangladesh's independence, and related civil disturbances.

Submission of this treaty marks a significant development in our international investment policy. I join with the United States Trade Representative and other U.S. Government agencies in supporting the treaty and favor its transmission to the Senate at an early date.

Respectfully submitted.

MICHAEL H. ARMACOST.

Treaty Between the United States of America and the People's Republic of Bangladesh Concerning the Reciprocal Encouragement and Protection of Investment

The United States of America and the People's Republic of Bangladesh (each hereinafter referred to as a "Party"),

Desiring to promote greater economic cooperation between them, particularly with respect to investment by nationals and companies of one Party in the territory of the other Party; and

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of both Parties,

Agreeing that discrimination on the basis of nationality by either Party against investment in its territory by nationals or companies of the other Party is not consistent with either a stable framework for investment or a maximum effective utilization of economic resources,

Having resolved to conclude a treaty concerning the encouragement and reciprocal protection of investment,

Have agreed as follows:

ARTICLE I—DEFINITIONS

For the purposes of this Treaty,

(a) "company" means any kind of juridical entity, including any corporation, company, association, or other organization, that is duly incorporated, constituted, or otherwise duly organized, regardless of whether or not the entity is organized for pecuniary gain, privately or governmentally owned, or organized with limited or unlimited liability.

(b) "company of a Party" means a company duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of a Party or a political subdivision thereof in which

(i) natural persons who are nationals of such Party, or

(ii) such Party or a political subdivision thereof or their agencies or instrumentalities

have a substantial interest as determined by such Party.

Each Party reserves the right to deny to any of its own companies or to a company of the other Party the advantages of this Treaty, if nationals of any third country control such company, provided that whenever one Party concludes that the benefits of this Treaty should not be extended to a company of the other Party for this reason, it shall promptly consult with the other Party to seek a mutually satisfactory resolution to this matter.

In any event, the juridical status of a company of a Party shall be recognized by the other Party and its political subdivisions.

(c) "investment" means every kind of investment, owned or controlled directly or indirectly, including equity, debt; and service and investment contracts; and includes:

(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;

(iii) a claim to money or a claim to performance having economic value, and associated with an investment;

(iv) intellectual and industrial property rights, including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, trade secrets and know-how, and goodwill;

(v) licenses and permits issued pursuant to law, including those issued for manufacture and sale of products;

(vi) any right conferred by law or contract, including rights to search for or utilize natural resources, and rights to manufacture, use and sell products; and

(vii) returns which are reinvested.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

(d) "own or control" means ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located.

(e) "national" of a Party means a natural person who is a national of a Party under its applicable law.

(f) "return" means an amount derived from or associated with an investment, including profit; dividend; interest; capital gain; royalty payment; management, technical assistance or other fee; and payment in kind.

ARTICLE II—TREATMENT OF INVESTMENT

1. Each Party shall maintain favorable conditions for investment in its territory by nationals and companies of the other Party. Each Party shall permit and treat such investment, and activities associated therewith, on a basis no less favorable than accorded in like situations to investment or associated activities of its own nationals or companies, or of nationals or companies of any third country, whichever is the more favorable.

2. (a) Notwithstanding the preceding provisions of this Article, each Party reserves the right to maintain limited exceptions to the standard of treatment otherwise required if such exceptions fall within one of the sectors or matters listed in the Annex to this Treaty. Each Party agrees to notify the other Party of all such exceptions at the time this Treaty enters into force. Moreover, each Party agrees to notify the other Party of any future exceptions falling within the sectors or matters listed in the Annex, and to maintain the number of such exceptions at a minimum. Other than with respect to ownership of real property, the treatment accorded pursuant to this subparagraph shall not be less favorable than that accorded in like situations to investments and associated activities of nationals or companies of any third country. However, either

Party may require that rights to engage in mining on the public domain shall be dependent on reciprocity.

(b) No exception introduced after the date of entry into force of this Treaty shall apply to investments of nationals or companies of the other Party existing in that sector at the time the exception becomes effective.

3. Investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. The treatment, protection and security of investment shall be in accordance with applicable national laws, and shall in no case be less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party. Each Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Party.

4. (a) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

(b) Nationals and companies of either Party, and companies which they own or control, shall be permitted to engage, within the territory of the other Party, top managerial personnel of their choice. Further, subject to laws and administrative regulations concerning the employment of foreign nationals, nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional and technical personnel of their choice, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of their investment.

5. The Parties recognize that, consistent with paragraph 1 of this Article, conditions of competitive equality should be maintained where investments owned or controlled by a Party or its agencies or instrumentalities are in competition, within the territory of such Party, with privately owned or controlled investments of nationals or companies of the other Party. In such situations, the privately owned or controlled investments shall receive treatment which is equivalent with regard to any special economic advantage accorded the governmentally owned or controlled investments.

6. In the context of its national economic policies and objectives, each Party shall seek to avoid the imposition of performance requirements on the investments of nationals and companies of the other Party.

7. In order to maintain a favorable environment for investments in its territory by nationals or companies of the other Party, each Party shall provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Each Party shall grant to nationals or companies of the other Party, on terms and conditions no less fa-

vorable than those which it grants in like situations to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, the right of access to its courts of justice, administrative tribunals and agencies, and all other bodies exercising adjudicatory authority, and the right to employ persons of their choice, who otherwise qualify under applicable laws and regulations of the forum regardless of nationality, for the purpose of asserting claims, and enforcing rights, with respect to their investments.

8. Each Party shall make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments in its territory of nationals or companies of the other Party.

9. The treatment accorded by a Party to nationals or companies of the other Party under the provisions of paragraph 1 of this Article shall in any State, Territory, possession, or political or administrative subdivision of the Party be the treatment accorded therein to companies incorporated, constituted or otherwise duly organized in other States, Territories, possessions, or political or administrative subdivisions of the Party.

ARTICLE III—COMPENSATION FOR EXPROPRIATION

1. No investment or any part of an investment of a national or a company of either Party shall be expropriated or nationalized by the other Party or subjected to any other measure or series of measures, direct or indirect tantamount to expropriation (including the levying of taxation, the compulsory sale of all or part of an investment, or the impairment or deprivation of its management, control or economic value), all such actions hereinafter referred to as "expropriation", unless the expropriation:

(a) is done for a public purpose;

(b) is accomplished under due process of law;

(c) is not discriminatory;

(d) does not violate any specific provision on contractual stability or expropriation contained in an investment agreement between the national or company concerned and the Party making the expropriation; and

(e) is accompanied by prompt, adequate and effective compensation.

Compensation shall be equivalent to the fair market value of the expropriated investment. The calculation of such compensation shall not reflect any reduction in such fair market value due to either prior public notice or announcement of the expropriatory action, or the occurrence of the events that constituted or resulted in the expropriatory action. Such compensation shall be paid promptly, shall be effectively realizable, shall bear current interest from the date of the expropriation at a rate equivalent to current international rates, and shall be freely transferable, in accordance with the provisions of Article V, at the prevailing market rate of exchange on the date of expropriation.

2. If either Party expropriates the investment of any company duly incorporated, constituted or otherwise duly organized in its territory, and if nationals or companies of the other Party, directly

or indirectly, own, hold or have other rights with respect to the equity of such company, then the Party within whose territory the expropriation occurs shall ensure that such nationals or companies of the other Party receive compensation in accordance with the provisions of the preceding paragraph.

3. Subject to the dispute settlement provisions of any applicable agreement, a national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right to prompt review by the appropriate judicial or administrative authorities of such other Party to determine whether any such expropriation has occurred and, if so, whether such expropriation, and any compensation therefor, conforms to the principles of international law as set forth in this Article.

ARTICLE IV—COMPENSATION FOR DAMAGES DUE TO WAR AND SIMILAR EVENTS

1. Nationals or companies of either Party whose investments in the territory of the other Party suffer

(a) damages due to war or other armed conflict between such other Party and a third country, or

(b) damages due to revolution, state of national emergency, revolt, insurrection, riot or act of terrorism in the territory of such other Party,

shall be accorded treatment no less favorable than that which such other Party accords to its own nationals or companies or to nationals or companies of any third country, whichever is the most favorable treatment, when making restitution, indemnification, compensation or other appropriate settlement with respect to such damages.

2. In the event that such damages result from:

(a) a requisitioning of property by the other Party's forces or authorities, or

(b) destruction of property by the other Party's forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

the national or company shall be accorded restitution or compensation consistent with Article III.

3. The payment of any indemnification, compensation or other appropriate settlement pursuant to this Article shall be freely transferable, in accordance with the provisions of Article V.

ARTICLE V—TRANSFERS

1. Each Party shall permit all transfers related to an investment in its territory of a national or company of the other Party to be made freely and without delay into and out of its territory. Such transfers include the following: returns; payments made arising out of a dispute concerning an investment; payments made under a contract, including amortization of principal and accrued interest payments made pursuant to a loan agreement; amounts to cover expenses relating to the management of the investment; royalties and other payments derived from licenses, franchises or other grants of rights or from administrative or technical assistance

agreements, including management fees; proceeds from the sale of all or any part of an investment and from the partial or complete liquidation of the company concerned, including any incremental value; additional contributions to capital necessary or appropriate for the maintenance or development of an investment.

2. To the extent that a national or company of either Party has not made another arrangement with the appropriate authorities of the other Party in whose territory the investment of such national or company is situated, currency transfers made pursuant to Paragraph 1 of this Article shall be permitted in a currency or currencies to be selected by such national or company. Except as provided in Article III, such transfers shall be made at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency or currencies to be transferred.

3. Notwithstanding the preceding paragraphs, either Party may maintain laws and regulations: (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, either Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable, nondiscriminatory and good faith application of its law.

ARTICLE VI—CONSULTATIONS AND EXCHANGE OF INFORMATION

1. The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty, including any matter relating to the laws, regulations, administrative practices or procedures, adjudicatory decisions, or policies of one Party that pertain to or affect investments of nationals or companies of the other Party.

2. If one Party requests in writing that the other Party supply information in its possession concerning investments in its territory by nationals or companies of the Party making the request, then the other Party shall, consistent with its applicable laws and regulations and with due regard for business confidentiality, endeavor to establish appropriate procedures and arrangements for the provision of any such information.

ARTICLE VII—SETTLEMENT OF INVESTMENT DISPUTES BETWEEN ONE PARTY AND A NATIONAL OR COMPANY OF THE OTHER PARTY

1. For purposes of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Party and a national or company of the other Party; (b) the interpretation or application of any investment authorization granted by its foreign investment authority to such national or company; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.

2. In the event of an investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of such Party, the parties to the dispute shall initially seek to resolve the dispute by consultation and negotiation. The parties may, upon the initia-

tive of either of them and as a part of their consultation and negotiation, agree to rely upon non-binding, third-party procedures, such as the fact-finding facility available under the Rules of the Additional Facility ("Additional Facility") of the International Centre for the Settlement of Investment Disputes ("Centre"). If the dispute cannot be resolved through consultation and negotiation, then the dispute shall be submitted for settlement in accordance with the applicable dispute-settlement procedures upon which they have previously agreed. With respect to expropriation by either Party, any dispute-settlement procedures specified in an investment agreement between such Party and such national or company shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and relevant provisions of domestic laws of such Party and treaties and other international agreements regarding enforcement of arbitral awards to which such Party has subscribed.

3. (a) The national or company concerned may choose to consent in writing to the submission of the dispute to the Centre or the Additional Facility, for settlement by conciliation or binding arbitration, at any time after six months from the date upon which the dispute arose, provided:

(i) the dispute has not, for any reason, been submitted by the national or company for resolution in accordance with any applicable dispute settlement procedures previously agreed to by the parties to the dispute; and

(ii) the national or company concerned has not brought the dispute before the courts of justice or administrative tribunals or agencies of competent jurisdiction of the Party that is party to the dispute.

Once the national or company concerned has so consented, either party to the dispute may institute proceedings before the Centre or the Additional Facility. If the parties disagree over whether conciliation or binding arbitration is the more appropriate procedure to be employed, the opinion of the national or company concerned shall prevail.

(b) Each Party hereby consents to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States ("Convention") and the Regulations and Rules of the Centre, or, if the Convention should, for any reason, be inapplicable, the Rules of the Additional Facility.

4. In any proceeding, judicial, arbitral or otherwise, concerning an investment dispute between it and a national or company of the other Party, a Party shall not assert, as a defense, counter-claim, right of set-off or otherwise, that the national or company concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any source whatsoever, including such other Party and its political subdivisions, agencies and instrumentalities.

5. For the purposes of this Article, any company legally constituted under the applicable laws and regulations of either Party or

a political subdivision thereof but that, immediately before the occurrence of the event or events giving rise to the dispute, was an investment of nationals or companies of the other Party, shall, in accordance with Article 25 (2)(b) of the Convention, be treated as a national or company of such other Party. This Article shall not apply to an investment dispute between a Party and a national of that Party.

6. The provisions of this Article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States or (b) under other official credit, guarantee or insurance agreements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE VIII—SETTLEMENT OF DISPUTES BETWEEN THE PARTIES CONCERNING INTERPRETATION OR APPLICATION OF THIS TREATY

1. Any dispute between the Parties arising out of or in connection with the interpretation or application of this Treaty should, if possible, be settled through diplomatic channels.

2. If a dispute between the Parties cannot thus be settled it shall upon the request of either Party be submitted to an arbitral tribunal.

3. The Tribunal shall be established for each case as follows: Within two months of receipt of a request for arbitration, each Party shall appoint an abritrator. The two arbitrators so appointed shall select a third arbitrator as Chairman, who is a national of a third State. The Chairman shall be appointed within two months of the date of appointment of the other two arbitrators.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointment. If the President is a national of either Party or he is unable to discharge the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or if he too is unable to discharge the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. In the event that an arbitrator resigns or is for any reason unable to perform his duties, a replacement shall be appointed within thirty days, utilizing the same method by which the arbitrator being replaced was appointed. If the replacement is not appointed within the time limit specified above, either Party may invite the President of the International Court of Justice to make the necessary appointment. If the President is a national of either of the Parties or is unable to act for any reason, either Party may invite the Vice-President, or if he is also a national of either of the Parties or is unable to act for any reason, the next most senior member of the International Court of Justice who is not a national of one of the Parties and is able to perform said duties, to make the appointment.

6. The arbitral tribunal shall reach its decision in accordance with international law by a majority of votes. Such decision shall

be binding on both Parties. Each Party shall bear the cost of its representation in the arbitral proceedings; the cost of the arbitrator and the remaining costs shall be borne in equal parts by the Parties. The Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties. The Tribunal shall determine its own procedure to the extent the Parties have been unable to agree upon applicable principles. The Tribunal shall arrange for submissions from the Parties, any necessary hearings, and a final decision on the dispute within one year from the date of the formation of the Tribunal.

7. The provisions of this article shall not apply to a dispute arising (a) under the export credit, guarantee or insurance programs of the Export-Import Bank of the United States, or (b) under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes.

ARTICLE IX—PRESERVATION OF RIGHTS

This Treaty shall not supersede, prejudice, or otherwise derogate from:

(a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of either Party;

(b) international legal obligations; or

(c) obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

whether extant at the time of entry into force of this Treaty or thereafter, that entitle investments, or associated activities, of nationals or companies of the other Party to treatment more favorable than that accorded by this Treaty in like situations.

ARTICLE X—MEASURES NOT PRECLUDED BY THIS TREATY

1. This Treaty shall not preclude the application by either Party of any and all measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude either Party from prescribing special formalities in connection with the establishment of investments in its territory of nationals and companies of the other Party, but such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XI—TAXATION

1. With respect to its tax policies, each Party should strive to accord fairness and equity in the treatment of investment of nationals and companies of the other Party.

2. Nevertheless, the provisions of this Treaty, and in particular Articles VII and VIII, shall apply to matters of taxation only with respect to the following:

(a) expropriation, pursuant to Article III;

(b) transfers, pursuant to Article V; or

(c) the observance and enforcement of terms of an investment agreement or authorization as referred to in Article VII (1)(a) or (b).

Matters covered by item 2(c) shall not be covered to the extent they are subject to the dispute settlement provisions of a convention for the avoidance of double taxation between the two Parties, unless such matters are raised under such settlement provisions and are not resolved within a reasonable period of time.

ARTICLE XII—APPLICATION OF THIS TREATY TO POLITICAL SUB-DIVISIONS OF THE PARTIES

This Treaty shall apply to political subdivisions of the Parties.

ARTICLE XIII—ENTRY INTO FORCE AND DURATION AND TERMINATION

1. This Treaty shall be ratified by each of the Parties and the ratifications thereof shall be exchanged as soon as possible.

2. This Treaty shall enter into force thirty days after the date of exchange of ratifications. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with Paragraph 3 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

3. Either Party may, by giving one year's written notice to the other Party, terminate this Treaty at the end of the initial ten year period or at any time thereafter.

4. With respect to investments made or acquired prior to the date of termination of this Treaty and to which this Treaty otherwise applies, the provisions of all of the other Articles of this Treaty shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS THEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate at Washington on the 12th day of March 1986 in the English and Bangla languages, both texts being equally authentic.

For the Government of the
United States of America:
CLAYTON YEUTTER.
For the Government of the
People's Republic of
Bangladesh:
KHORSHED ALAM.

ANNEX

Consistent with Article II paragraph 3, each Party reserves the right to maintain limited exceptions in the sectors or matters it has indicated below:

THE UNITED STATES OF AMERICA

Air transportation; ocean and coastal shipping; banking; insurance; government grants; government insurance and loan pro-

grams; energy and power production; custom house brokers; ownership of real estate; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources.

THE PEOPLE'S REPUBLIC OF BANGLADESH

Arms and ammunition and allied defence equipment; atomic energy; air transport; telecommunication (common carrier services); generation (excluding stand-by generation) and distribution of electricity; forest extraction (mechanised); sea trawling; commercial trading; insurance; indenting; public utilities; shipping; oil and gas (except for hydrocarbon exploration through production sharing contract/joint venture); oil refining and products marketing (except under joint venture); communication satellite; housing and ownership of real estate.

PROTOCOL

The duly authorized Plenipotentiaries of the Parties have agreed upon the following provisions clarifying their intent in respect to certain Articles of the Treaty Concerning Treatment and Protection of Investment signed this date, which shall be considered integral parts of the Treaty:

1. Each Party shall accord, under its laws and regulations, to investments and associated activities in its territory of nationals or companies of the other Party, treatment no less favorable than that which it accords in like situations to investments and associated activities of its own nationals or companies or of nationals or companies of any third country, whichever is the most favorable. Application of laws and regulations shall not impair the substance of rights guaranteed by this Treaty. Associated activities include:

(a) the establishment, control and maintenance of branches, agencies, offices, factories or other facilities for the conduct of business;

(b) the organization of companies under applicable laws and regulations; the acquisition of companies or interests in companies or in their property; and the management, control, maintenance, use, enjoyment and expansion, and the sale, liquidation, dissolution or other disposition, of companies organized or acquired.

(c) the making, performance and enforcement of contracts;

(d) the acquisition (whether by purchase, lease or otherwise), ownership and disposition (whether by sale, testament or otherwise), of personal property of all kinds, both tangible and intangible;

(e) the leasing of real property appropriate for the conduct of business;

(f) the acquisition, maintenance and protection of copyrights, patents, trademarks, trade secrets, trade names, licenses and other approvals of products and manufacturing processes, and other industrial property rights; and,

(g) the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

2. The most favored nation provisions of Article II, paragraph 2, shall not apply to advantages accorded by either Party to nationals or companies of any third country by virtue of that Party's binding obligations that derive from full membership in a regional customs union or free trade area.

3. The provisions of Article II, paragraph 4(b), concerning the right of nationals and companies to employ personnel of their choice, shall be subject to the provision of Article X. Furthermore, as for any laws concerning the employment of foreign nationals which require the employment of a Party's own nationals in certain positions or the employment of a certain percentage of its own nationals in positions in connection with investment made in its territory by nationals or companies of the other Part, each Party agrees to administer such laws flexibly, taking into account *inter alia*, the nature of the investment, the requirements of the positions in question, and the availability of qualified nationals.

4. The parties recognize that restrictions on transfers abroad of sales or liquidation proceeds of an investment will adversely affect future capital inflows, contrary to the spirit of this Treaty and the interests of the Party imposing those restrictions. Nevertheless, the Parties recognize that Bangladesh may find its foreign exchange reserves at a very low level. In these circumstances, the Government of Bangladesh may temporarily delay transfers of sales or liquidation proceeds, but only (i) in a manner not less favorable than that accorded to comparable transfers to investors of third countries; (ii) to the extent and for the time period necessary to restore its reserves to a minimally acceptable level, but in no case for a period of more than five years, during each year of which an amount of no less than 20% of the value of the proceeds shall be permitted to be transferred; and (iii) after providing the investor an opportunity to invest the sales or liquidation proceeds in a manner which will preserve its value until transfer occurs.

5. The provisions of this Treaty are not intended to apply to any claims concerning losses incurred prior to the entry into force of this Treaty by nationals or companies of either Party.

U.S. TRADE REPRESENTATIVE,
Washington, March 12, 1986.

His Excellency KHORSHED ALAM,
Secretary, Ministry of Industries, The People's Republic of Bangladesh.

YOUR EXCELLENCY: I have the honor to refer to the Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment, and wish to inform that as per discussions during the course of negotiations on the question of employment under Article II, paragraph 4 (b), our intent is that with respect to the United States and Bangladesh this paragraph accords nationals and companies of either Contracting State the right to engage top managerial personnel of their choice on the basis of nationality and to engage professional and technical personnel of their choice

subject to the employment laws and regulations of each Contracting State. I would appreciate confirmation that your Government shares this understanding.

With compliments of my highest esteem.

Sincerly,

CLAYTON YEUTTER,
For and on behalf of the Government of the United States of America.

[Translation]

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,
March 12, 1986.

His Excellency CLAYTON YEUTTER,
U.S. Trade Representative, Government of the United States of America.

EXCELLENCY: I have the honor to acknowledge receipt of your letter which reads as follows:

"I have the honor to refer to the Treaty between the United States of America and the People's Republic of Bangladesh concerning the Reciprocal Encouragement and Protection of Investment, and wish to inform that as per discussions during the course of negotiations on the question of employment under Article II, paragraph 4(b), our intent is that with respect to the United States and Bangladesh this paragraph accords nationals and companies of either Contracting State the right to engage top managerial personnel of their choice on the basis of nationality and to engage professional and technical personnel their choice subject to the employment laws and regulations of each Contracting State. I would appreciate confirmation that your Government shares this understanding."

I confirm the above understanding between the two parties.

With compliments of my highest esteem.

Yours sincerely,

(Signed) KHORSHED ALAM,
For and on behalf of the Government of the People's Republic of Bangladesh.

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